or its agencies,[17] there can be no deprivation in respect of the alien. The state, like any other employer, is not restricted by the Constitution from a free choice of its employees.[18] The municipality cannot object, for the great weight of authority holds that as an administrative agency of the state in carrying on public works it is subject to the directions of the state.[19]

Statutes which have nothing to do with the performance of public works, but which apply only to corporations, municipal and private, have been sustained as an exercise of the special legislative power to amend the charters of domestic corporations which is now reserved in nearly all states, and to regulate the admission of foreign corporations.[20] The limitations on this twofold power have not been worked out with any degree of exactness.[21] In many cases this justification is relied upon by the courts as an additional ground to support statutes which come under the police power. The right to exclude foreign corporations before they acquire property in the state is extremely broad,[22] and, generally speaking, any provision can be inserted by amendment into the charter of a domestic corporation which could have been introduced at the time of the original grant.[23]

If a statute restricts liberty of contract and cannot be upheld on any of these grounds, it is invalid. An illustration is provided by the recent decision condemning the Arizona Alien Act, which applied indiscriminately to all employers of labor. *Raich* v. *Attorney-General*, U. S. Dist. Ct., Dist. of Arizona. (Not yet reported.) It promoted no legitimate public interest, and being of general application, advantage could not be taken of the narrower justification on which the New York statute should have been upheld.

THE RIGHT OF PUBLICITY. — A recent English case seems to recognize as appurtenant to premises abutting on a public way a right to have neighboring portions of the highway free from obstructions which unreasonably interfere with the view of the premises from the highway. *Cobb* v. *Saxby*, [1914] 3 K. B. 822.[1] In contradistinction to the right of privacy of the person, this might well be called the right of publicity. In this case one of two adjoining landowners was enjoined from

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[17] See Atkin *v.* Kansas, 191 U. S. 207, 223.

[18] People *v.* Ludington's Sons, 131 N. Y. Supp. 550. *Contra*, Chicago *v.* Hulbert, 205 Ill. 346, 68 N. E. 786.

[19] Hunter *v.* Pittsburgh, 207 U. S. 161, and cases cited *supra*, note 14. This right of regulation depends upon the public character of the work, and not upon the state's right to revoke the municipal charter at will. Keefe *v.* People, 37 Colo. 317, 87 Pac. 791. (The municipal corporation was created by the state constitution, for the express purpose of preventing legislative alterations in its charter.)

[20] Erie R. Co. *v.* Williams, 233 U. S. 685; State *v.* Brown & Sharp Mfg. Co., 18 R. I. 16, 25 Atl. 246; Shaffer *v.* Mining Co., 55 Md. 74.

[21] For comment on this right, see 20 HARV. L. REV. 634.

[22] Security Mut. L. Ins. Co. *v.* Prewitt, 202 U. S. 246. See also 28 HARV. L. REV. 304.

[23] Erie R. Co. *v.* Williams, *supra*.

[1] For a more complete statement of this case, see RECENT CASES, p. 520, and 111 T. L. R. 814.

maintaining signboards projecting over the street so as entirely to obscure the view from the street of the side wall of his neighbor's building, which projected beyond the front of his own building, apparently because of a jog in the street, although there were neither doors nor windows in the wall and its sole use was for advertising purposes.[2]

It seems now well settled that the owner of land abutting upon a public highway possesses, as incident to such ownership, easements of light, air, and access in and from the adjacent street for the benefit of his abutting lands.[3] Naturally enough there is but little direct support in the authorities for the additional right which the principal case seems to recognize, since it is seldom infringed without infringing one or more of the more firmly established rights to light, air, and access,[4] but relief has occasionally been granted where the plaintiff suffered no other substantial damage than the obstruction of the view of his premises from the street.[5] Moreover, since the obstruction complained of is generally also an obstruction of the public easement of passage, the courts usually base the relief upon the ground that the plaintiff suffers "special" or "peculiar" damage from a public nuisance.[6] If the adjoining landowner suffers actual damage because his right of passage over the highway is infringed, he may properly sue as an individual injured by the obstruction of the public right of passage,[7] but unless he is in some way injured *because* the public right is violated, there is absolutely no basis for a right of action on that ground.[8] On the contrary assumption that a private individual may always enjoin a public nuisance whenever by a mere coincidence it causes him pecuniary loss in some altogether collateral way, the maintenance of the lower portion of the boards in the principal case might perhaps have been enjoined on this ground, since they were

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[2] Although the reports describe this building as projecting into the street, this is probably a misdescription; otherwise the injunction should have been denied because of unclean hands. Brutsche *v.* Bowers, 122 Ia. 226, 97 N. W. 1076.

[3] Muhlker *v.* New York & H. R. Co., 197 U. S. 544; Beckett *v.* Midland R. Co., L. R. 3 C. P. 82. See 4 HARV. L. REV. 75; 15 *id.* 305. It has been declared that these rights are limited to the portion of the highway upon which the premises immediately abut. See Opinion of the Justices, 208 Mass. 603, 606, 94 N. E. 849. It is submitted that this limitation is narrow, for the owners rights do not depend on the ownership of the fee in the highway. Abendroth *v.* Manhattan Ry. Co., 122 N. Y. 1, 25 N. E. 496. And it seems to be generally disregarded. Benjamin *v.* Storr, L. R. 9 C. P. 400, and cases *infra*, note 4.

[4] The following cases recognized obstruction of the view to the premises as an element of legal damage where other rights were also infringed. First National Bank *v.* Tyson, 133 Ala. 459, 32 So. 144; Green *v.* Thresher, 235 Pa. St. 169, 83 Atl. 711; John Ainsfield Co. *v.* Edward B. Grossman Co., 98 Ill. App. 180; Hallock *v.* Scheyer, 33 Hun (N. Y.) 111.

[5] Perry *v.* Castner, 124 Ia. 386, 100 N. W. 84; McCormick *v.* Weaver, 144 Mich. 6, 107 N. W. 314.

[6] First National Bank *v.* Tyson, *supra;* McCormick *v.* Weaver, *supra;* Green *v.* Thresher, *supra;* John Ainsfield Co. *v.* Edward B. Grossman Co., *supra*. *Cf.* Campbell *v.* Paddington Corporation, [1911] 1 K. B. 869. For a criticism of the words "special" and "peculiar" in this connection see an article by Judge Jeremiah Smith, 15 COL. L. REV. 1, 9.

[7] See 15 COL. L. REV. 1, 22.

[8] This argument finds strong support in those cases in which the plaintiff has suffered damage from an act of the defendant which was also in violation of a public statute, but is denied recovery because the harm was not of the kind which the statute aimed to prevent. Gorris *v.* Scott, L. R. 9 Exch. 125.

probably a public nuisance.[9] But the upper signboards could scarcely be regarded as such an illegal obstruction of the highway,[10] and the court made no distinction, but rightly based its decree entirely on the infringement of the adjoining owner's private right. To entitle him to relief, recognition of the right of publicity as a private right in no way dependent upon interference with the public easement is essential, not only in the comparatively rare cases, where no such interference occurs, but also where the obstruction has been legally authorized by the state or municipal authorities. Consequently, decisions granting relief in such cases are direct authority for this so-called right of publicity, except in so far as they can be based upon the violation of other rights involved.[11]

While it seems eminently desirable under modern conditions that the existence of such a right should be recognized, it is to be observed that only a substantial obstruction of the view from the street should constitute a violation of it.[12] In this it is to be distinguished from the easement of access, any interference with which is actionable,[13] and is more nearly analogous to the easement of ancient lights.[14]

VALUATION OF PUBLIC SERVICE FRANCHISES. — It is a judicial commonplace that "a franchise is property." But this statement, like many another legal axiom, is fraught with ambiguity.[1] It does not distinguish

[9] Commonwealth *v.* Wilkinson, 16 Pick. (Mass.) 175; Commonwealth *v.* King, 13 Metc. (Mass.) 115. See also 2 ELLIOTT, STREETS AND HIGHWAYS, 3 ed., § 832.

[10] Loth *v.* Columbia Theatre Co., 197 Mo. 328, 94 S. W. 847; Chambers *v.* Ohio Life, etc. Ins. Co., 1 Disney (Oh.) 327, 335; Hawkins *v.* Sanders, 45 Mich. 491, 8 N. W. 98.

[11] Perry *v.* Castner, *supra;* Alabama Terminal R. Co. *v.* Crawford, 10 Ala. App. 296, 64 So. 650.

[12] The cases in which relief has been denied may be distinguished on this ground, although the language of some of them is broad enough to deny the existence of such a right altogether. Hay *v.* Weber, 79 Wis. 587, 48 N. W. 859; Cummins *v.* Summunduwat Lodge, 9 Kan. App. 153, 58 Pac. 486; Wornser *v.* Brown, 149 N. Y. 163, 43 N. E. 524; Hawkins *v.* Sanders, *supra;* Tracy *v.* Le Blanc, 89 Me. 304.

[13] See 15 COL. L. REV. 142, 154.

[14] See SALMOND, TORTS, § 81. The principal case might perhaps be supported on the additional ground that there was no justification for the damage intentionally caused by the obstruction. Burker *v.* Smith, 69 Mich. 380, 37 N. W. 838; Flaherty *v.* Moran, 81 Mich. 52, 45 N. W. 381. See also Tuttle *v.* Buck, 107 Minn. 145, 119 N. W. 946. *Contra,* Metzger *v.* Hochrein, 107 Wis. 267, 83 N. W. 308; Letts *v.* Kessler, 54 Oh. St. 73, 42 N. E. 765. But there is little likelihood that this so-called "spite fence" doctrine would be followed in England. Potts *v.* Smith, L. R. 6 Eq. 311, 317. This question, however, is less likely to arise there because the obstruction is generally justified in order to prevent the acquisition of an easement of light. See 2 WASHBURN, REAL PROPERTY, 6 ed., 319; TUDOR, LEADING CASES, 3 ed., 201. Such a justification would not obtain where only the view of the premises is involved. Smith *v.* Owen, 35 L. J. Ch. 317. Consequently, the question might well arise where the obstruction was on private property.

[1] The cases abound in sweeping statements to the effect that a franchise is "taxable, inheritable, alienable, subject to levy and sale under execution, to condemnation under the exercise of the right of eminent domain, and invested . . . with the attributes of property generally." People *v.* O'Brien, 111 N. Y. 1, 41, 18 N. E. 692, 699. Such language is obviously too broad. Not all franchises are inheritable and alienable, and in the absence of an express provision to the contrary such franchises are